IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 336 of 1999
with
CRIMINAL MISCELLANEOUS APPLICATION NO.5134 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OSILAACSOALGI - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Petitioner No(s).: 1.
Mr.Gohil, Addl.PUBLIC PROSECUTOR for Respondent No(s).: 1.
MR ASIM J PANDYA for Respondent No(s).: 2.
MR JS YADAV for Respondent No(s).: 2.
MR GIRISH D BHATT for Respondent No(s).: 3.
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 26/07/2005

ORAL JUDGMENT

1.The short facts of the case appear to be that the petitioner who was allotted two plots in GIDC had to

pay the outstanding amount of instalment as per the GIDC, whereas it is the case of the petitioner that the payment is already made. It appears that the proceedings under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter referred to "Act") were initiated and it appears that an order came to be passed in September, 1980 for vacating the premises and for taking over the possession. It appears that in the year 1993 the possession of the shed is taken over by the GIDC and when the petitioner approached the GIDC for getting back the possession, the petitioner was communicated that if he is ready to pay the outstanding amount, the request for possession could be considered. As the payment was not made, the GIDC took the decision for disposal of the shed by public auction. It appears that on 8.1.1995 public advertisement was issued for disposal of the sheds and efforts were not materialised and on the date of petition both the sheds bearing Nos CIB 98/5 and 98/6 have remained with the GIDC. It also appears that the petitioner has filed Civil Suit No.90/95 at the time when the action was taken for auctioning the property as stated by the petitioner. It also appears that the application for interim injunction-Exh.5 was also made by the petitioner in the said suit for restraining the

corporation from disposing of the plots in question by public auction. The trial court had granted ad interim injunction which, ultimately, after hearing both the sides was vacated as per the order, dated 30.1.1996. It also appears that the petitioner carried the matter before the Ld.District Judge by preferring Misc.Civil Appeal No.150/96 and as there was delay in preferring the appeal, application for condonation of delay was made which ultimately was rejected and the matter was also carried before this court by preferring Civil Revn.Appln.No.129/97 and as per order dated 26.2.1998 of this court (N.N.Mathur,J as His Lordship then was) the said revision application was dismissed. It appears that thereafter the petitioner has preferred this petition for various reliefs at para 17 of the petition which are reproduced hereunder:

> (A) Please direct to the State to file a criminal complaint against the responsible officers for fabricating false documents and evidence to make heavy injury to the petitioner under Indian Penal Code 193 and 120-B.
>
> (B) Please direct the State Govt, how many rupees misappropriated from this account and by whom misappropriated from this account and also direct the State to file a criminal complaint under section 409 of Indian Penal Code.
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> (C) Please direct the Auditor and other officers to produce audited accounts of Osilaac Solagi.
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> (D) Please to direct Auditor General from how many accounts of the public or the State and what amounts have been misappropriated by the officers

of the state and the report be called for in this Honourable Court.

(E) Please direct to the State (GIDC) handed over the possession of the property with machinery of Osilaacsoalgi forthwith to the petitioner.

(F) Please direct the State to pay compensation to the Osillacsoalgi from the State of Gujarat Rs.50 lacs (Rs.Fifty Lacs) for making heavy injury.

(G) This Honourable Court may pass any order in the interest of justice.

2.I have heard Mr.Jaiswal who is appearing as party in person claiming his status as partner as well as Power of Attorney holder of petitioner No.1. I have also heard Mr.G.D.Bhatt for the Regional Manager, GIDC-respondent No.3, Mr.Yadav for Auditor General respondent No.2 and MR.Gohil, Ld.APP for the respondent-State.

3. It appears that the basis of the petitioner in the present petition is that extract of books of accounts of GIDC copy whereof is produced at page 17, 48 and order for eviction under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter referred to as “the Act”). It is the case of the petitioner that different amounts are claimed in different statements of accounts and also referred to in the order under the Act and therefore it is submitted that fabricated record is produced before this court. It is also the case of the petitioner that

as such if the amount is properly calculated and considered, the petitioner has already paid the outstanding amount and has paid surplus amount of Rs.55,000/- which is required to be refunded by the GIDC and therefore it has been submitted that the action of taking over the possession of the sheds is illegal and the petitioner is entitled to get back the possession of the sheds. It is also submitted by the petitioner that the petitioner is entitled to damages of Rs.50 lacs from the State of Gujarat. However, Mr.Jaiswal who is appearing as party in person during the course of hearing submitted that for amount of damages he is leaving the matter to the court.

4. It is admitted position that the civil suit is preferred for challenging the action of the GIDC of taking over the possession and the said suit is pending before the civil court. What is the actual outstanding amount and whether the amount paid by the petitioner is given due credit and the amount of interest is properly charged or not are essentially the disputed questions of facts which can not be conveniently examined by this court while exercising powers under Article 226 of the Constitution of India. I am inclined to take such view because so far as the petitioner is concerned, as per the petitioner, the outstanding amount is paid and

there is surplus payment of Rs.55,000/- whereas the stand of the GIDC at para 15 is as under:

> “15.With reference to para 9 of the petition I say that the allegations made therein are not true and are not admitted. It is denied that the firm in question has paid Rs.55,000/- or any amount by way of excess amount as alleged by the petitioner in para under reply. I say that after issuing notice dated 13.11.1979 under section 4(1) of the Gujarat Public Premises Act, the firm in question had not paid the amount against the dues of Rs.1,06,995/- and hence the corporation had issued notice dated 6.9.80 for outstanding dues only upto 13.11.1979 without including the amounts on account of penal interest, interest on delayed payment, service charges, lease rent etc. I further say that thereafter statement of account was given to the firm in question for Rs.2,42,710/- including of amounts chargeable as on and upto February, 1986. Thus, on the facts and circumstances of the case, it is not correct to say that the firm in question had paid any excess amount to the corporation.”

5. Therefore, as there is genuine dispute in respect of the payment already made of the outstanding amount and due credit thereof, it would be for the petitioner assert and press such claim in the pending suit, if such question arises for consideration.

6. Mr.Jaiswwal, party in person submitted that the Civil Suit was at a stage when the property was to be auctioned and the rights of the petitioner for assailing the action against the offence committed by the officers of the GIDC can not be prayed in the pending suit and for that as per Mr.Jaiswal the only remedy is to prefer petition under Article 226 of the Constitution of India. It appears that for the action

by the petitioner in respect of any alleged offence committed by the officers of the GIDC the same would be separately dealt with as stated hereinafter. However, so far as the prayers for getting back the possession of the property and damages are concerned, considering the facts and circumstances of the case it appears that as there are disputed questions of facts it can not be conveniently examined by this court as referred herein above and it would be for the petitioner to seek appropriate relief in the pending suit, if required, by moving necessary amendment for getting back the possession of the property in question and also for damages, if otherwise, permissible in law. Therefore, the prayer for handing over the possession of the property and for getting damages as prayed for in para 17(E) and (F) can not be granted by this court more particularly when the Civil Suit No.90/95 is pending and as there are disputed questions of facts on the payment already made and credit thereof given for outstanding amounts and the petitioner can resort to appropriate proceedings in the pending suit.

7. Apart from the above, it deserves to be recorded that as such there is order passed for eviction under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act by the authority and the petitioner had

the remedy of preferring appeal against the order of eviction before the concerned Ld.District Judge as per the provisions of the Act and the petitioner has not resorted to such remedy. Therefore, in view of the aforesaid, the prayer for handing over the possession of the property in question and for damages, subject to the aforesaid objection, can not be granted by this court.

8. As regards allegation of fabrication of false documents and for directing the State to file complaint for prosecuting the responsible officers of GIDC for the offence under section 409 IPC for misappropriation of funds are concerned, it has been submitted by the petitioner that for prosecuting the officers of the GIDC permission/sanction is required to be obtained and therefore the petitioner is not in a position to file private complaint without there being any sanction. It has been submitted Mr.Bhatt appearing on behalf of the GIDC, that the GIDC is a statutory corporation and for prosecuting the officers of the GIDC sanction is not required since the officers of the GIDC can not be said to be public servants as per the provisions of Section 197 of Cr.P.C. For such purpose, he has relied upon the decision of the Apex Cort in the matter of **Mohmed Haji Raja vs State of Bihar and others** reported in **(1998) 5**

SCC 91. The party in person has relied upon the decision of the Apex Court in the matter of **Suo Motu Proceedings against Mr.R.Karuppan** reported in **2001(4) Supreme 108** for contending for remedy in respect of offence of perjury the prosecution is not maintainable without sanction.

9 In my view, as such when the suit is at large pending before the civil court, whether the documents and extracts of books of accounts are fabricated or genuine can be conclusively answered after proper evidence is led in the proceedings of civil suit where the court has to examine the question of testing the validity of the action by the officers of the GIDC for taking over the possession of sheds in question. At that time the court would also incidentally be required to examine as to whether any amount was outstanding and/or any surplus payment was made by the petitioner and, if yes, to what extent and on the basis of such conclusion it may conclude on the genuineness of documents over which the the reliance may be placed by either party. Allowing of prosecution at this stage may seriously prejudice the rights of the parties in the pending suit. Mr.Bhatt is also right in contending that for prosecuting the officers of the GIDC sanction as required under section 197 Cr.P.C may not be required.

However, as the suit is pending before the civil court and keeping in view the scope and ambit of proceedings of civil suit I find that even if the question of permission is to be considered, it would not be required at this stage for granting such permission for launching prosecution since same may seriously prejudice the rights of other parties in the pending suit.

10.It appears from the tenor of the petition that the petitioner is seeking action against the officers of the GIDC for so called misappropriation pertaining to the accounts of the petitioner and as per the petitioner surplus amount is paid, but it is not given due credit and therefore the prayer is made for directing the action for misappropriation by filing criminal complaint. As observed earlier, whether the amount paid by the petitioner is duly given credit in the concerned account of the petitioner or not is a question which will have to be decided by the civil court in the pending suit and therefore at this stage no final view can be expressed by this court as to whether any amount is misappropriated by the officers of the GIDC or not. Ultimately, it will be for the civil court to examine the matter and to express final view on the said aspects.

11. An attempt is made by Mr.Jaiswal, the party in person, to contend that the books of accounts of the GIDC are required to be audited by the Auditor General and since GIDC is a statutory body governed by the provisions of GIDC Act, the accounts of the GIDC duly audited by the Auditor General pertaining to the account of the petitioner herein, if produced, would show the genuineness of the outstanding amount or genuine recovery pertaining to the account. It has been submitted by Mr.Yadav, Ld.Standing counsel on behalf of the Auditor General that the individual accounts of person with whom the transactions are entered into by the GIDC for sale of plot or otherwise are not being audited but the accounts of GIDC considering as one unit are being audited. Therefore, when the office of the Auditor General has not audited the individual account of the petitioner pertaining to the transaction by the GIDC with the petitioner firm, the Auditor General can not be directed to produce the accounts. Further, as the civil suit is pending, if permissible in accordance with law, the petitioner may resort to appropriate proceedings for production of audited books of accounts for supporting his case that no amount is outstanding and as such there is over payment. The powers by this court under Article 226 of the

Constitution of India would normally not be exercised for supporting the case of the party who has approached the civil court and when before the civil court the rights of the parties are yet to be finalised. Therefore, this would not be a fit case for directing the Auditor General or the GIDC, as the case may be, to produce the books of accounts of the GIDC/ the petitioner firm before this court since even otherwise also this court finds that for rendering decision in this petition production of such documents is not required leaving the parties to resort to appropriate proceedings in the pending civil suit.

12. The petitioner-Mr.Jaiswal-the party in person also submitted that the grievance on the part of the petitioner is for production of fabricated documents before this court by the GIDC and also contrary statements and extracts of books of accounts. He, therefore, submitted that it is an offence of perjury and calls for action by this court against the officers of the GIDC who have produced false record before this court. In any view of the matter, as observed earlier, the prayer made by the petitioner qua getting back the possession of the property and for damages can not be granted in view of the pendency of civil suit and therefore it can not be said that any undue benefit is

enjoyed by the party to the proceedings by production of documents in the present proceedings and hence it would not be a fit case for initiating any action against production of such documents annexed with the affidavit in reply.

13. In view of the above, subject to aforesaid observations, petition fails and hence same is rejected. Rule is discharged.

13. In view of the order passed in main Special Criminal Application No.336/99 no order is required to be passed in Cri.Misc.Application No.5134/05 and same disposed of accordingly.

(JAYANT PATEL,J)

26.7.05/murty